

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC

In the Matter of:

THOMAS H. KILRAIN

FAA Order No. 95-13

Served: June 16, 1995

Docket No. CP94NE0268

ORDER DENYING MOTION TO DISMISS

Complainant filed a motion to dismiss Respondent Thomas Kilrain's appeal with prejudice. Complainant argues that Mr. Kilrain failed to set forth his specific objections to the initial decision in detail contrary to Section 13.233(d)(1) of the Rules of Practice, 14 C.F.R. § 13.233(d)(1). Complainant argues further that it is prejudiced by Mr. Kilrain's failure to provide any indication of the specific bases for his appeal, claiming that "Respondent's failure to narrow the issues leave Complainant with a tremendous burden in preparing its reply brief." For the reasons set forth below, Complainant's motion is denied.

Section 13.233(d)(1) provides as follows:

A party shall set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If the party relies on evidence contained in the record for the appeal, the party shall specifically refer to the pertinent evidence contained in the transcript in the appeal brief.

14 C.F.R. § 13.233(d)(1).

Mr. Kilrain's appeal brief contains only three lines of text as follows:

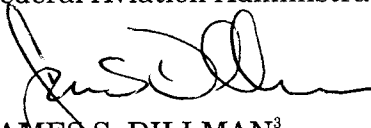
Legal issues are as follows:

1. Whether Section 43.15(a)(1) is applicable.
2. Whether Section 43.5(a) is applicable.

The question is whether Mr. Kilrain's appeal brief is sufficiently detailed to satisfy the requirement to perfect his appeal. On its face, Mr. Kilrain's very short appeal brief merely sets forth the issues. However, based upon the previous proceeding below, there can be no doubt about what Mr. Kilrain is arguing on appeal. It appears that Mr. Kilrain, who is *pro se*, is making the same arguments that he raised before the law judge at both the prehearing conference (PHC-Tr. 11-13, 15-16)¹ and the hearing itself (Tr. 88-100, 109-112)² regarding whether he complied with AD 89-18-08. Mr. Kilrain admitted violating 14 C.F.R. § 43.5(a). (Tr. 6-7).

Thus, although Mr. Kilrain's appeal brief has some obvious deficiencies, it is, nonetheless, sufficient because Mr. Kilrain is simply renewing arguments raised below. Complainant may be inconvenienced by the deficiencies in Mr. Kilrain's appeal brief, but not prejudiced. Consequently, Complainant's motion to dismiss Mr. Kilrain's appeal with prejudice is hereby denied.

DAVID R. HINSON, ADMINISTRATOR
Federal Aviation Administration


JAMES S. DILLMAN³
Assistant Chief Counsel

Issued this 16th day of June, 1995.

¹ PHC Tr. refers to the prehearing conference transcript.

² Tr. refers to the hearing transcript.

³ Issued under authority delegated to the Chief Counsel and the Assistant Chief Counsel for Litigation by Memorandum dated October 27, 1992, under 49 U.S.C. § 322(b) and 14 C.F.R. § 13.202. See 57 Fed. Reg. 58,280 (1992).